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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,770	08/24/2001	Donald Gross	GRO-12525	2923

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EXAMINER

BASTIANELLI, JOHN

ART UNIT PAPER NUMBER

3754

DATE MAILED: 09/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/938,770

Applicant(s)

GROSS, DONALD

Examiner

John Bastianelli

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wafer et al. US 5,404,615 in view of White, Jr. US 4,956,167 in view of Thompson US 4,103,868.

Wafer discloses a valve assembly (col. 2, lines 61-66) comprising a valve body having a rotary driven valve member (Abstract) and a valve stem, a valve handle 10 connected to the valve stem 14 having a proximal end 16 and a distal end 18 with a longitudinal axis extending between the ends, the distal end having an opening 26 that is adapted to receive a drive head 16 of a handle 100 (Figs. 6-7). The method is seen as practiced by the apparatus. Wafer lacks the valve handle connected to the valve stem at a proximal end of the handle and the opening oriented generally transverse to a length direction of the handle. White discloses a ratchet handle 20 (col. 2, lines 29-35) having a proximal end 26, a distal end 25 with a square or hexagonal opening 27 (col. 2, lines 9-11) adapted to receive a ratchet handle 22 with the opening generally transverse to the length direction of the handle that is selectively repositionable to establish a desired angular relationship from zero to ninety degrees, between the ratchet handle and the valve handle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the torque multiplier of White in place of the one of Wafer in order to provide more torque to the valve as the distance of the lever arm would be greater and to use a standard

“wrench set” as these are inexpensive and readily available. Wafer lacks a rotary valve member. Thompson discloses a rotary valve member 22. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the valve of Wafer be a rotary valve member as disclosed by Thompson as Wafer has stated that in col. 2, lines 61-65 “which is detachably connected with the valve stem and a shear pin assembly of a valve (not shown), as is well known in the art”, the rotary valve member of Thompson would provide the valve of Wafer with excellent valving operation and proper functioning

Response to Arguments

3. Regarding applicant’s arguments that Wafer is not a ratchet handle, The examiner meant to say that Wafer is seen as a handle with White as the ratchet handle.

4. In response to applicant’s argument that White is nonanalogous art with Wager, it has been held that a prior art reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443; 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, it is reasonably pertinent to the particular problem with which the applicant was concerned. The examiner sees it as obvious to anyone who has seen the Wafer reference to modify it using White to make the handle as a standard “wrench set”, since the problem solved by both references is creating greater torque by applying the same force.

5. In response to applicant’s argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the

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teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Wafer is only using gate valves as an example (col. 1, lines 11-27). Wafer states that the problem he is fixing is that “ many times a valve becomes stuck, thus requiring additional torque to open and close the valve” (col. 22-24). Again it is obvious to use Wafer or White on any type of valve that becomes stuck.

6. Also regarding this argument, applicant's invention is basically using White's patent to turn a rotary valve. The examiner could also use White in view of Thompson, but in an effort to better explain to the applicant that this “technology” is already well known, has used Wafer in view of White and Thompson.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

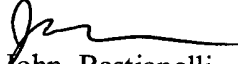
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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Bastianelli whose telephone number is (703) 305-0058. The examiner can normally be reached on M-F (9:00-6:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0975.


John Bastianelli
Examiner
Art Unit 3754


JB

September 3, 2003